

BOIES, SCHILLER FLEXNER LLP
RICHARD J. POCKER (NV Bar No. 3568)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Telephone: 702.382.7300
Facsimile: 702.382.2755
rpocker@bsfllp.com

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
WILLIAM A. ISAACSON (*pro hac vice*)
KAREN DUNN (*pro hac vice*)
2001 K Street, NW
Washington, DC 20006
Telephone: 202.223.7300
Facsimile: 202.223.7420
wisaacson@paulweiss.com
kdunn@paulweiss.com

MORGAN, LEWIS & BOCKIUS LLP
BENJAMIN P. SMITH (*pro hac vice*)
SHARON R. SMITH (*pro hac vice*)
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: 415.442.1000
Facsimile: 415.442.1001
benjamin.smith@morganlewis.com
sharon.smith@morganlewis.com

DORIAN DALEY (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
jim.maroulis@oracle.com

*Attorneys for Plaintiffs and
Counterdefendants Oracle International
Corporation and Oracle America, Inc.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE INTERNATIONAL CORP., a California corporation, and ORACLE AMERICA, INC., a Delaware corporation,

Plaintiffs/Counterdefendants.

V.

RIMINI STREET, INC., a Nevada corporation,
and SETH RAVIN, an individual.

Defendants/Counterclaimants.

Case No. 2:14-cv-01699-MMD-DJA

**ORACLE INTERNATIONAL
CORPORATION AND ORACLE
AMERICA, INC.'S RESPONSE TO
RIMINI'S OMNIBUS PRE-TRIAL
MOTIONS IN LIMINE**

PUBLIC REDACTED VERSION

1 TABLE OF CONTENTS
2

	Page
3 ARGUMENT	1
4 I. MOTION NO. 1: MOTION TO EXCLUDE ALL TOMORROWNOW	
5 EVIDENCE.....	1
6 A. The TomorrowNow Evidence Is Admissible Under Rule 404(b) to Show	
7 Plans and Preparation.....	3
8 B. TomorrowNow Evidence Is Admissible Under the Intrinsic Evidence Rule.	3
9 C. The TomorrowNow Evidence Is Admissible Under Rule 402 to Prove	
10 Oracle's Lanham Act Claim.....	3
11 D. TomorrowNow Evidence Is Admissible for Impeachment Purposes.....	4
12 E. The TomorrowNow Evidence Is Admissible to Rebut Any Evidence About	
13 Rimini or Ravin's State of Mind.....	5
14 F. Rule 402 and Rule 403 Do Not Bar the Admission of TomorrowNow	
15 Evidence.....	5
16 II. MOTION NO. 2: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF	
17 RIMINI'S PAYMENT FOR CLIENT REFERENCES.....	5
18 III. MOTION NO. 3: MOTION TO EXCLUDE CONTEMPT PROCEEDINGS.....	8
19 A. Evidence from the Contempt Proceedings and the Court's Related Findings	
20 Are Relevant Under Rule 402	9
21 B. The Probative Value of the Court's Findings and Related Evidence from	
22 the Contempt Proceedings Outweighs Any Potential Prejudice to Rimini.....	11
23 IV. MOTION NO. 4: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF	
24 RIMINI'S SPOILATION OF EVIDENCE IN 2010	14
25 V. MOTION NO. 5: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF	
26 RIMINI'S DEFICIENT [REDACTED]	16
27 VI. MOTION NO. 6: THE COURT SHOULD NOT EXCLUDE JUDGE HICKS'S	
28 HOLDINGS THAT ARE RELEVANT TO ORACLE'S CLAIMS.	18
29 VII. MOTION NO. 7: MOTION TO PRECLUDE USE OF EVIDENCE OF CHANGE	
30 IN PROCESSES TO ESTABLISH LIABILITY OR WILLFULNESS	22
31 VIII. MOTION NO. 8: MOTION TO PRECLUDE USE OF EVIDENCE FROM	
32 RIMINI I TO CONTRADICT THE RIMINI I SPECIAL VERDICT FINDINGS.....	25
33 A. The Court Should Deny Rimini's Motion to Preclude Willfulness Evidence	
34 from Rimini I as Moot.....	25
35 B. If Rimini Opens the Door to State of Mind Evidence as to Process 2.0,	
36 Oracle Should be Permitted to Rebut and Impeach Witness Testimony	
37 Using Evidence of Willfulness.....	26
38 C. The Court Has Previously Ruled That Oracle May Argue for Lost Profits	
39 Damages Related to the "Gap Customers"	27
40 IX. MOTION NO. 9: THE COURT SHOULD NOT EXCLUDE HYPOTHETICAL	
41 QUESTIONS THAT ASSUME RIMINI HAS INFRINGED	28
42 X. MOTION NO. 10: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF	
43 RIMINI'S SOFTWARE LIBRARY	30

TABLE OF AUTHORITIES

		Page(s)
2		
3	Cases	
4	<i>In re Aircrash in Bali, Indonesia,</i> 871 F.2d 812 (9th Cir. 1989).....	23
5		
6	<i>Atlanta Channel, Inc. v. Solomon,</i> 2021 WL 4243383 (D.D.C. Sept. 17, 202)	29
7		
8	<i>Banks v. McIntosh Cnty., Georgia,</i> 2022 WL 2758609 (S.D. Ga. July 14, 2022)	7
9		
10	<i>Barten v. State Farm Mut. Auto. Ins. Co.,</i> 2015 WL 11111309 (D. Ariz. Apr. 8, 2015).....	21
11		
12	<i>Cargill Inc. v. Progressive Dairy Sols., Inc.,</i> 362 F. App'x 731 (9th Cir. 2010)	11
13		
14	<i>Chaudhry v. Smith,</i> 2020 WL 869115 (E.D. Cal. Feb. 21, 2020)	12
15		
16	<i>Chein v. Shumsky,</i> 373 F.3d 978 (9th Cir. 2004) (en banc).....	22
17		
18	<i>Clark Tech. LLC v. Corncob Inc.,</i> 2019 WL 4279462 (E.D. Wis. Sept. 10, 2019)	7
19		
20	<i>Conboy v. Wynn Las Vegas,</i> 2013 WL 1701069 (D. Nev. Apr. 18, 2013)	6, 7
21		
22	<i>Cooper v. Firestone Tire & Rubber Co.,</i> 945 F.2d 1103 (9th Cir. 1991).....	7
23		
24	<i>Creswell v. HCAL Corp.,</i> 2007 WL 628036 (S.D. Cal. Feb. 12, 2007)	12, 13
25		
26	<i>Engquist v. Or. Dep't of Ag.,</i> 478 F3d 985 (9th Cir. 2007).....	12, 13
27		
28	<i>Ensorce Invs. LLC v. Willis,</i> 2020 WL 532376 (S.D. Cal. Feb. 3, 2020)	20, 21
29		
30	<i>Gilanian v. City of Boston,</i> 431 F. Supp. 2d 172 (D. Mass. 2006)	23
31		
32	<i>Goff v. Washington Cnty.,</i> No. 03-268, 2005 WL 8165291 (D. Idaho Mar. 10, 2005)	20
33		

1	<i>Grace v. Apple</i> , 2020 WL 227404 (N.D. Cal. Jan. 15, 2020)	13
2	<i>Gray v. Golden Gate Nat'l Recreational Area</i> , 866 F. Supp. 2d 1129 (N.D. Cal. 2011)	23
3	<i>Hamilton v. AVPM Corp.</i> , 593 F. App'x 314 (5th Cir. 2014)	29
4	<i>Ind. Ins. Co. v. Gen. Elec. Co.</i> , 326 F. Supp. 2d 844 (N.D. Ohio 2004)	24
5	<i>Jacobs v. Alexander</i> , 2016 WL 4440957 (E.D. Cal. Aug. 22, 2016)	7
6	<i>Johnson v. Cnty. of L.A.</i> , 2007 WL 7269840 (C.D. Cal. Apr. 23, 2007)	14
7	<i>Kaneka Corp. v. SKC Kolon PI, Inc.</i> , 2015 WL 12696109 (C.D. Cal. Nov. 5, 2015)	12, 13
8	<i>Marez v. Bassett</i> , 2011 WL 13213813 (C.D. Cal. Oct. 3, 2011)	13
9	<i>McConnell v. Wal-Mart Stores, Inc.</i> , 995 F. Supp. 2d. 1164 (D. Nev. 2014)	24
10	<i>Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.</i> , 545 U.S. 913 (2005) (Breyer, J., concurring)	21
11	<i>Nipper v. Snipes</i> , 7 F.3d 415 (4th Cir. 1993)	20
12	<i>Novick v. Shipcom Wireless, Inc.</i> , 946 F.3d 735 (5th Cir. 2020)	23
13	<i>Okada v. Whitehead</i> , 759 F. App'x 603 (9th Cir. 2019) (unpublished)	7
14	<i>Olivier v. Exxon Mobil Corp.</i> , 2022 WL 3010691 (M.D. La. July 29, 2022)	23
15	<i>Oracle USA, Inc. v. Rimini St., Inc.</i> , 2014 WL 5285963 (D. Nev. Oct. 14, 2014)	19
16	<i>Oracle USA, Inc. v. Rimini St., Inc.</i> , 209 F. Supp. 3d 1200 (D. Nev. 2016)	19
17	<i>Oracle USA, Inc. v. Rimini St., Inc.</i> , 6 F. Supp. 3d 1108 (D. Nev. 2014)	18, 21, 26

1	<i>Outley v. City of New York</i> , 837 F.2d 587 (2d Cir. 1988).....	5
2		
3	<i>Oyeniran v. Holder</i> , 672 F.3d 800 (9th Cir. 2012).....	27
4		
5	<i>In re Paoli R.R. Yard PCB Litig.</i> , 916 F.2d 829 (3d Cir. 1990).....	15
6		
7	<i>PBM Prods., LLC v. Mead Johnson & Co.</i> , 639 F.3d 111 (4th Cir. 2011).....	16
8		
9	<i>Polar Bear Prods., Inc. v. Timex Corp.</i> , 384 F.3d 700 (9th Cir. 2004).....	21
10		
11	<i>Rozier v. Ford Motor Co.</i> , 573 F.2d 1332 (5th Cir. 1978).....	23
12		
13	<i>Santa Maria City Firefighters Union v. City of Santa Maria</i> , 2022 WL 2198707 (C.D. Cal. Feb. 9, 2022), modified on reconsideration, 2022 WL 2200420 (C.D. Cal. May 9, 2022)	20
14		
15	<i>Schindler v. Seiler</i> , 474 F.3d 1008 (7th Cir. 2007).....	20
16		
17	<i>SEC v. Ambassador Advisors</i> , LLC, 2022 WL 2188145 (E.D. Pa. Feb. 28, 2022).....	29
18		
19	<i>Smith v. Baker</i> , 2012 WL 4468624 (D. Nev. Sept. 25, 2012)	21
20		
21	<i>Tom v. Martinez</i> , 2004 WL 5794824 (S.D. Cal. Nov. 23, 2004)	5
22		
23	<i>U.S. v. Boulware</i> , 384 F.3d 794 (9th Cir. 2004).....	12, 13, 19
24		
25	<i>Uber Techs., Inc. v. Doe</i> , 2015 WL 1926291 (N.D. Cal. Apr. 27, 2015)	21
26		
27	<i>United States v. Abel</i> , 469 U.S. 45 (1984).....	20
28		
29	<i>United States v. Anderson</i> , 741 F.3d 938 (9th Cir. 2013).....	1, 7
30		
31	<i>United States v. Balwani</i> , 2022 WL 597040 (N.D. Cal. Feb. 28, 2022)	23
32		

1	<i>United States v. Barry</i> , 2010 WL 11470165 (N.D. Ga. 2010)	5
2		
3	<i>United States v. Cordero</i> , 973 F.3d 603 (6th Cir. 2020).....	16
4		
5	<i>United States v. Drebin</i> , 557 F.2d 1316 (9th Cir. 1977).....	3
6		
7	<i>United States v. Gay</i> , 967 F.2d 322 (9th Cir. 1992).....	4
8		
9	<i>United States v. Hansen</i> , 2021 WL 2434561 (W.D. Wash. June 15, 2021).....	21
10		
11	<i>United States v. Jackson</i> , 84 F.3d 1154 (9th Cir. 1996).....	3
12		
13	<i>United States v. Jones</i> , 29 F.3d 1549 (11th Cir. 1994).....	20
14		
15	<i>United States v. Kealoha</i> , 2019 WL 2620004 (D. Haw. June 26, 2019).....	13
16		
17	<i>United States v. Lozano</i> , 623 F.3d 1055 (9th Cir. 2010).....	5
18		
19	<i>United States v. Mende</i> , 43 F.3d 1298 (9th Cir. 1995).....	5, 15
20		
21	<i>United States v. Pafaite</i> , 2022 WL 837489 (M.D. Pa. Mar. 21, 2022).....	18
22		
23	<i>United States v. Sanft</i> , 2021 WL 5770292 (W.D. Wash. Dec. 6, 2021).....	29
24		
25	<i>United States v. Sine</i> , 493 F.3d 1021 (9th Cir. 2007).....	20, 21, 22
26		
27	<i>United States v. Slade</i> , 2015 WL 4208634 (D. Alaska July 10, 2015)	<i>passim</i>
28		
29	<i>United States v. Stinson</i> , 647 F.3d 1196 (9th Cir. 2011).....	19
30		
31	<i>Whitewater W. Indus., Ltd. v. Pac. Surf Designs, Inc.</i> , 2019 WL 2211897 (S.D. Cal. May 22, 2019).....	12, 13
32		
33	<i>Wyatt Tech. Corp. v. Malvern Instruments, Inc.</i> , 2010 WL 11505684 (C.D. Cal. Jan. 25, 2010)	13

1 Other Authorities

2	Fed. R. Evid. 402	<i>passim</i>
3	Fed. R. Evid. 403	<i>passim</i>
4	Fed. R. Evid. 404	9, 16, 25, 30
5	Fed. R. Evid. 404(a)(3)	4
6	Fed. R. Evid. 404(b).....	1, 3
7	Fed. R. Evid. 404(b)(2)	16
8	Fed. R. Evid. 407	22, 23, 24
9	Fed. R. Evid. 607	26
10	Fed. R. Evid. 613(b).....	26
11	Fed. R. Evid. 701	29
12	Fed. R. Evid. 701(b).....	30
13	Fed. R. Evid. 801(c).....	20
14	Fed. R. Evid. 802	19, 25, 29
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Plaintiffs/Counterdefendants Oracle International Corporation, and Oracle America, Inc.
 2 (together “Oracle”), submit the following response to Rimini Street, Inc. and Seth Ravin’s (together
 3 “Rimini”) omnibus pre-trial motions *in limine*. Rimini’s motions *in limine* should be denied.

4 **ARGUMENT**

5 **I. MOTION NO. 1: MOTION TO EXCLUDE ALL TOMORROWNOW EVIDENCE**

6 This Court admitted the TomorrowNow evidence in the *Rimini I* trial. It is likewise
 7 admissible here (1) under Rule 404(b) because it shows a continuing “preparation” and “plan” by
 8 Mr. Ravin to violate Oracle’s copyrights; (2) as intrinsic “evidence necessary to tell a clear and
 9 coherent story” of Mr. Ravin’s and Rimini’s conduct from inception through this action, *United*
 10 *States v. Slade*, 2015 WL 4208634, *1–2 (D. Alaska July 10, 2015) (citing *United States v.*
 11 *Anderson*, 741 F.3d 938 (9th Cir. 2013); (3) under Rule 402 because it is directly relevant to
 12 Oracle’s Lanham Act claim that Rimini made false statements to Oracle’s customers regarding the
 13 differences between Rimini’s support practices and the support practices of an adjudicated criminal
 14 copyright infringer; (4) for purposes of impeachment; and (5) to rebut any suggestion that Rimini
 15 did not intend to violate Oracle’s copyrights.

16 In marketing materials to customers, Mr. Ravin stated that he designed TomorrowNow’s
 17 support processes and that they were substantially the same as Rimini’s Process 1.0. The processes
 18 Mr. Ravin designed resulted in TomorrowNow incurring extensive civil and criminal liability.¹ *See*
 19 *Rimini I*, ECF Nos. 606-10, 606-31. “[TomorrowNow] made at least 6,189 Copies of Oracle’s
 20 PeopleSoft Software. Each such copy constituted an infringement” of Oracle’s copyrights. *Rimini*
 21 *I*, ECF No. 606-30, ¶ 16. TomorrowNow also pled guilty to criminal copyright infringement on

22 ¹ Rimini asserts that the “criminal allegations against TomorrowNow refer to specific acts of
 23 infringement that occurred after Ravin had already left the company. Mot. at 3. The criminal
 24 information, however, alleges that “Beginning on an unknown date, but *by no later than in or*
 25 *about March 2005*, and continuing to on or about October 12, 2008 . . . TOMORROWNOW,
 26 INC., through its employees and agents, did willfully . . . infringe the copyrights of copyrighted
 27 works, that is, Oracle software” *Rimini I*, ECF No. 560-8 at ¶ 6 (Reckers Decl., Ex. H
 28 (Information, United States v. TomorrowNow, Inc., N.D. Cal. Case No. 4:11-cr-00642-PJH, Dkt.
 1)) at 4:5–12. Mr. Ravin left TomorrowNow in March 2005. Regardless of the exact date on
 which Mr. Ravin left TomorrowNow, by his own admission, he designed the TomorrowNow
 model of support that violated the criminal copyright laws. And there is no question that Oracle’s
 civil case against TomorrowNow was also about the support processes that Mr. Ravin designed.

1 September 14, 2011, admitting that “TomorrowNow was engaged in an effort to convince Oracle
 2 customers . . . to terminate their use of Oracle’s maintenance and support services. . . . In order to
 3 service some customers, TomorrowNow obtained copies of the Oracle software One of the
 4 ways that TomorrowNow obtained some of these materials was by downloading the materials from
 5 Oracle websites.” *Rimini I*, ECF No. 606-10 at 3. And when TomorrowNow shuttered its door,
 6 [REDACTED]
 7 [REDACTED]. *Rimini I*, ECF No. 608 (Ex. 17, *Rimini I* Slepko Dep. at 73:7–17);
 8 ECF No. 608 (Ex. 13, *Rimini I* Ravin 11/18/11 Dep. at 399:7–16).

9 Contrary to Rimini’s mischaracterization of the *Rimini I* trial record, Mot. at 2, the Court
 10 denied Rimini’s motion in limine to exclude TomorrowNow evidence and admitted at the *Rimini I*
 11 trial evidence of “the TomorrowNow history, as it relates to the defendant’s mental state and
 12 intention,” *Rimini I*, ECF No. 794 (Tr. at 753:3–10), including evidence that TomorrowNow parent
 13 SAP AG (“SAP”) admitted wrongdoing by TomorrowNow in July of 2007, Declaration of
 14 Benjamin P. Smith (“Smith Decl.”), Ex. 1 (Oracle *Rimini I* Closing, Part 1) at 114, and that
 15 TomorrowNow was shut down in October of 2008, Smith Decl., Ex. 2 (Oracle *Rimini I* Closing,
 16 Part 2) at 59. This Court initially admitted only evidence related to “[Mr. Ravin’s] awareness of
 17 the challenge to the process that was common between TomorrowNow and when he was there, and
 18 what was being done in connection with this particular litigation,” because Rimini successfully
 19 argued that the TomorrowNow evidence would prejudice the jury as to whether Rimini likewise
 20 infringed Oracle’s copyrights. *Rimini I* ECF No. 790 (Tr. at 402:20–405:23). The Court expanded
 21 the scope after “the TomorrowNow issue . . . was placed in front of the jury in the course of [Mr.
 22 Ravin’s] direct examination.” *Rimini I* ECF No. 794 (Tr. at 752:16–753:10). Here, the evidence
 23 is relevant even if Mr. Ravin does not put at issue his belief in the legitimacy of Process 2.0 because
 24 he implemented the same infringing business model at both TomorrowNow and Rimini, and the
 25 evidence is admissible to tell a clear and coherent story and demonstrate Mr. Ravin’s plans and
 26 preparation for infringing Oracle’s copyrights. It is also relevant to Oracle’s Lanham Act claims
 27 and Rimini’s standard messaging to customers that TomorrowNow’s processes are different from
 28 Rimini’s. In addition, Mr. Ravin intends to testify that he has, *at all times*, respected Oracle’s

1 intellectual property rights so the TomorrowNow evidence is admissible for that reason. ECF No.
 2 1309 at 19, ¶ 57. Finally, Rimini has put *Rimini I* evidence, including the TomorrowNow evidence,
 3 directly at issue, by arguing that “because of what was revealed during discovery in *Oracle I*, Oracle
 4 was on notice that Rimini might be continuing to infringe Oracle’s copyrights.” ECF No. 1253 at
 5 32. The Court’s summary judgment order notes that “there is an issue of material fact as to what
 6 claims Oracle knew or should have known about prior to February 17, 2012, that must be resolved
 7 at trial.” *Id.* at 32, 34. Thus, the TomorrowNow evidence should be admitted at trial for this reason
 8 as well.

9 **A. The TomorrowNow Evidence Is Admissible Under Rule 404(b) to Show Plans
 10 and Preparation.**

11 The Ninth Circuit has held that Rule 404(b) is a “rule of inclusion …[;] unless the evidence
 12 of other crimes tends only to prove propensity, it is admissible.” *United States v. Jackson*, 84 F.3d
 13 1154, 1159 (9th Cir. 1996) (citation omitted). The intent behind the rule is not to “flatly prohibit
 14 the introduction of such evidence but to limit the purpose for which it may be introduced.” *Id.* The
 15 TomorrowNow evidence is admissible to show the genesis of Ravin’s continuing plan to violate
 16 Oracle’s copyrights. *Cf. United States v. Drebin*, 557 F.2d 1316 (9th Cir. 1977) (evidence “was
 17 properly admitted as proof of a common plan or scheme”).

18 **B. TomorrowNow Evidence Is Admissible Under the Intrinsic Evidence Rule.**

19 Oracle will present a claim for damages from September 28, 2011, to July 31, 2014, for
 20 infringement of Oracle’s PeopleSoft copyrights in 47 PeopleSoft development environments—a
 21 period that, under this Court’s order, was not adjudicated in *Rimini I*, but for which liability was
 22 established by the *Rimini I* verdict. ECF No. 1253 at 22. The TomorrowNow evidence is essential
 23 to “tell[ing] a clear and coherent story,” of Ravin’s development of an illegal support process at
 24 TomorrowNow, his wholesale transference of that process to Rimini, his recruiting former
 25 TomorrowNow customers to purchase Rimini Street’s services, and the *Rimini I* jury finding that
 26 Rimini’s Process 1.0 was illegal. *Slade*, 2015 WL 4208634, *1–2.

27 **C. The TomorrowNow Evidence Is Admissible Under Rule 402 to Prove Oracle’s
 28 Lanham Act Claim.**

29 The TomorrowNow evidence is admissible under Rule 402 because the evidence is directly

1 relevant to Oracle’s Lanham Act claim. Because of the close ties between Rimini and
2 TomorrowNow and the publicity around TomorrowNow’s civil and criminal liability, Rimini
3 frequently faced questions from prospective customers about the differences between Rimini and
4 TomorrowNow. Before TomorrowNow pled guilty, Ravin touted Rimini’s services are being
5 identical to TomorrowNow’s. After the guilty plea, Rimini created a document titled, “
6 [REDACTED],” Rimini provided the following talking point to its
7 sales team under the heading, “[REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]” Smith Decl., Ex. 3 (P-
11 0637 (RSI2_000122710) at 41).² These statements are false and they violate the Lanham Act, as
12 Oracle has alleged throughout the litigation. Smith Decl., Ex. 14 (Oracle’s Responses to 6th Set of
13 Interrogatories at 15:25–16:1). Along with the other false statements that Rimini made to Oracle’s
14 customers that resulted in those customers’ terminating their Oracle support contracts and seeking
15 support from Rimini, these false statements serve as the basis for Oracle’s \$1.3 billion Lanham Act
16 claim in this case. The TomorrowNow evidence is central to proving (1) that Rimini’s statements
17 to customers differentiating its support model from TomorrowNow’s were false and (2) the
18 statements were crucial to Rimini’s efforts to win Oracle’s customers by distinguishing Rimini
19 from its CEO’s prior company and that company’s very public criminal copyright infringement.

D. TomorrowNow Evidence Is Admissible for Impeachment Purposes.

21 Mr. Ravin intends to testify at trial that “at all times,” he “has intended to respect, and has
22 respected, Oracle’s intellectual property rights.” ECF No. 1309 at 19, ¶ 57. The TomorrowNow
23 evidence is admissible for impeachment. Fed. R. Evid. 404(a)(3); *United States v. Gay*, 967 F.2d

25 ² This statement [REDACTED] was part of Rimini's
According to Rimini's Chief Marketing Officer, [REDACTED].

Smith Decl., Ex. 4 (Rowe Dep. 128:18-129:18).

1 322, 328 (9th Cir. 1992); *Outley v. City of New York*, 837 F.2d 587, 593 (2d Cir. 1988).

2 **E. The TomorrowNow Evidence Is Admissible to Rebut Any Evidence About**
 3 **Rimini or Ravin's State of Mind.**

4 Oracle maintains that Rimini and Mr. Ravin's state of mind are not relevant to Oracle's
 5 copyright infringement claims, but to the extent that Rimini or Mr. Ravin present evidence of their
 6 state of mind, the TomorrowNow evidence is admissible to rebut that testimony, and to show Mr.
 7 Ravin's knowledge of and intent to infringe Oracle copyrights. *See, e.g., United States v. Barry*,
 8 2010 WL 11470165, at *4 (N.D. Ga. 2010) (admitting prior bad acts).

9 **F. Rule 402 and Rule 403 Do Not Bar the Admission of TomorrowNow Evidence.**

10 Rimini seeks exclusion of the TomorrowNow evidence under Rule 402 and 403. But this
 11 evidence is relevant, and Rule 403 is "an extraordinary remedy to be used sparingly ... Under the
 12 terms of the rule, the danger of prejudice must not merely outweigh the probative value of the
 13 evidence, but substantially outweigh it." *United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir.
 14 1995) (citation omitted); *Tom v. Martinez*, 2004 WL 5794824, at *1 (S.D. Cal. Nov. 23, 2004).
 15 Because of its probative value to key issues, the Court should admit the TomorrowNow evidence,
 16 particularly because any concerns of prejudice can be mitigated through appropriate limiting
 17 instructions. *See United States v. Lozano*, 623 F.3d 1055, 1060 (9th Cir. 2010).

18 **II. MOTION NO. 2: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF**
 19 **RIMINI'S PAYMENT FOR CLIENT REFERENCES**

20 Oracle should not be precluded from presenting evidence that Rimini paid for client
 21 references, including those made by [REDACTED]—Rimini's first purported
 22 "customer." Mot. at 5. Oracle presented evidence of [REDACTED] practices in the *Rimini I* trial, and that
 23 information is also relevant here. First, this evidence is relevant to Ravin's credibility, as his
 24 dealings with [REDACTED] and other references demonstrate a willingness to mislead customers.
 25 Second, as to Oracle's Lanham Act claims: (a) when Rimini uses customer references that it has
 26 paid for without disclosing that the reference was paid, it is deceiving customers; and (b) references
 27 to [REDACTED] and its then-owner [REDACTED] involvement are relevant to provide full factual context for
 28 Oracle's claim that Rimini falsely advertises itself and its services. Finally, the evidence is relevant

1 to damages because if Rimini wins a client by violating Oracle's copyrights and false statements to
 2 customers, and that customer becomes a reference, the damage from Rimini's illegal conduct is
 3 compounded when that customer entices others to buy Rimini's services. Rimini has an organized
 4 program to sign new customers through the use of references, and credits referrals for customers it
 5 wins. Smith Decl., Ex. 5 (P-2069 at 25).

6 [REDACTED] is a marketing services company that Rimini claimed was its "first customer." ECF
 7 No. 1384-8 at 85. [REDACTED] and Rimini arranged a relationship where Rimini paid [REDACTED] for "marketing
 8 services," entered into a service contract with [REDACTED] ostensibly to maintain Siebel software, and then
 9 presented [REDACTED] as a reference customer to attract others. *Id.* [REDACTED] never implemented Siebel
 10 software, and any services that Rimini actually provided [REDACTED] were minimal. *Id.*; *see also Rimini*
 11 *I*, ECF No. 790 (Tr. at 355:16-19). [REDACTED] the [REDACTED], had known Ravin since the
 12 third grade, and he is now employed by Rimini. *Rimini I*, ECF No. 790 (Tr. at 340:15-17, 361:7-
 13 13).

14 Rimini's practice of "buying" customers did not end with [REDACTED]. Rimini secured the [REDACTED]
 15 [REDACTED]—through a significant discount in exchange for
 16 future customer references. ECF No. 1384-8 at 87. In 2016, Rimini was offering [REDACTED]
 17 [REDACTED] to customers if they would serve as a reference. *Id.* at 87-88, n. 217-19. Rimini also
 18 traded free [REDACTED] for customer references. *Id.*

19 **Rule 402.** Rimini's tactics to procure its first "customers"—particularly [REDACTED]—are relevant
 20 in multiple ways. First, this evidence is relevant because it is "evidence necessary to tell a clear
 21 and coherent story" of Ravin's and Rimini's conduct from inception through this fiction, and to
 22 provide context for Oracle's current Lanham Act claims. *United States v. Slade*, 2015 WL
 23 4208634, at *1-2 (D. Alaska July 10, 2015). Second, paid and fraudulent references used with
 24 customers constitute material misstatements under Oracle's Lanham Act claims. Third, evidence
 25 on these subjects is also relevant to Ravin's credibility because his past conduct with [REDACTED]
 26 implicates his trustworthiness. *See Conboy v. Wynn Las Vegas*, 2013 WL 1701069, at *2 (D. Nev.
 27 Apr. 18, 2013) (admitting evidence that was "relevant to plaintiff's credibility as a witness").

28 In the analogous context of a prosecutor's ability to admit evidence of acts beyond those

1 that are “intrinsic” to the crime charged, courts in the Ninth Circuit have admitted “circumstantial
 2 evidence explaining the general nature of a defendant’s business activity” to “provid[e] a context
 3 in which the transactions at issue took place” and give the jury a “clear and comprehensible”
 4 account of events. *United States v. Anderson*, 741 F.3d 938, 949–50 (9th Cir. 2013) (admitted
 5 evidence of the defendant’s business practices in a criminal copyright case because “the larger and
 6 more sophisticated his operation was, the more likely it was that he knew what he was doing was
 7 illegal”); *see also Slade*, 2015 WL 4208634, at *2. Rimini’s habit of misleading customers helps
 8 demonstrate the extent of its lack of forthrightness and provides the full context of its operations.³

9 This evidence is also relevant to Ravin’s credibility. Courts routinely admit evidence when
 10 it undermines the credibility of a witness. *See Wynn Las Vegas, LLC*, 2013 WL 1701069, at *2;
 11 *see also Cooper v. Firestone Tire & Rubber Co.*, 945 F.2d 1103, 1105 (9th Cir. 1991) (“The
 12 evidence of other accidents, whether similar or not, tends to show the witness’s claims of product
 13 safety are overstated and the witness therefore may not be reliable.”); *Okada v. Whitehead*, 759 F.
 14 App’x 603, 605 (9th Cir. 2019) (unpublished) (admitting evidence for the independent reason that
 15 it was “were highly relevant to [the defendant’s] credibility as a witness.”). Courts have concluded
 16 that evidence is relevant to a witness’ credibility if it would tend to call into question the honesty
 17 or reliability of the witness. *See Whitehead*, 759 F. App’x at 605; *Cooper*, 945 F.2d 1103 at 1105.
 18 The jury could find evidence concerning Rimini’s early customer referrals highly relevant to
 19 Ravin’s honesty and reliability as a witness—particularly Ravin’s dealings with [REDACTED].

20 **Rule 403.** The probative value of this evidence is not outweighed by any substantial
 21 prejudice to Rimini, potential to waste time, or potential to confuse the jury under Rule 403.

22 ³ The cases Rimini cites are inapposite. Unlike in *Jacobs v. Alexander*, 2016 WL 4440957, at *9
 23 (E.D. Cal. Aug. 22, 2016), where the court granted an unopposed motion *in limine*, the evidence
 24 Rimini seeks to exclude is not relevant only to “previously dismissed claims,” but also to Oracle’s
 25 Lanham Act claim and the history of the parties’ dispute. *Banks v. McIntosh Cnty., Georgia*,
 26 2022 WL 2758609, at *8 (S.D. Ga. July 14, 2022) involved the very different legal question
 27 whether a previous zoning ordinance that the court described was a proper “historical fact” under
 28 the Supreme Court’s test for including evidence of past discrimination. Finally, *Clark Tech. LLC v. Corncob Inc.*, 2019 WL 4279462, at *11 (E.D. Wis. Sept. 10, 2019) has nothing to do about
 what evidence may be relevant to a Lanham Act claim; there the plaintiffs for the first time on
 summary judgment attempted to argue that the defendants had violated the Lanham Act “on an
 entirely different alleged misrepresentation.”

1 Rimini's arguments that the evidence is too "old" because it occurred 15–17 years ago and did not
 2 involve Oracle present no barrier to admission. The conduct at issue is not from a random time in
 3 the past, but rather the very beginning of Rimini's operations, as such it provides a clear picture to
 4 the jury of what Rimini has been doing since it engaged its first "customer." Additionally, the
 5 conduct may not directly involve Oracle, but it involves Rimini's customers and Rimini's
 6 relationship with its customers, which is at the heart of Oracle's Lanham Act claim. In any event,
 7 Rimini's objections are arguments it can make to the jury.

8 **III. MOTION NO. 3: MOTION TO EXCLUDE CONTEMPT PROCEEDINGS**

9 The Court should reject Rimini's attempt to exclude (1) evidence from the contempt
 10 proceedings arising out of *Rimini I*, including materials produced after the close of discovery in
 11 *Rimini II*; (2) exhibits, trial testimony, deposition testimony, expert opinions from the contempt
 12 proceedings; and (3) evidence and argument about Judge Hicks's Order finding Rimini in contempt
 13 of the Permanent Injunction. Rimini claims that the "contempt proceedings are irrelevant to *Rimini*
 14 *II* because they involve conduct that occurred after the conduct being adjudicated in this litigation,"
 15 which Rimini claims "is not relevant to the distinct claims, issues, and evidence set for adjudication
 16 in *Rimini II*." Mot. at 7, 8. Rimini's central defense in this case is that it implemented a "Process
 17 2.0" in July 2014 and has respected Oracle's copyrights and license agreements since that time.
 18 ECF No. 1309 at 2, 4. Judge Hicks's contempt findings show that Rimini's claims are false, as
 19 Rimini infringed Oracle's copyrights and violated its licenses terms in 2019 and 2020.

20 Unable to dispute the fact Rimini continued its improper conduct years after it implemented
 21 its purported "Process 2.0," Rimini once again argues that this case is hermetically sealed off from
 22 *Rimini I*. Judge Hicks already rejected this argument: "there is no separate and delineated line
 23 between [*Rimini I*] and [*Rimini II*] based solely on Process 1.0 and 2.0," and that "the permanent
 24 injunction does not just enjoin Process 1.0," but instead enjoins conduct that has been adjudicated
 25 infringing. *Rimini I*, ECF No. 1459 at 10–11. Further, all evidence from *Rimini I* is part of the
 26 record in this case. ECF No. 95. The "claims, issues, and evidence" to be presented at trial are
 27 accordingly *not* distinct from the conduct adjudicated and enjoined in *Rimini I*, as Rimini claims,
 28 Mot. at 8, and certainly are not distinct from the conduct adjudicated in the contempt proceedings.

1 After the contempt hearing, this Court found, based on the evidence that Rimini now seeks to
 2 exclude, that Rimini's conduct consistent with its Process 2.0 support processes, infringed Oracle's
 3 copyrights and violated the Permanent Injunction. Evidence and argument about these findings,
 4 and the underlying documents, expert reports, and testimony, is relevant and admissible.

5 **A. Evidence from the Contempt Proceedings and the Court's Related Findings
 Are Relevant Under Rule 402.**

6 The evidence from the contempt proceedings and the Court's related findings are relevant
 7 and admissible for reasons that have nothing to do with Rimini's willfulness or Rimini's or Ravin's
 8 habit and character. ECF No. 1378 at 24–26.⁴

9 First, the contempt findings and underlying documentary and testimonial record prove the
 10 falsity of Rimini's statements to Oracle customers, which are at issue in Oracle's Lanham Act
 11 claims against Rimini. ECF No. 1378 at 24. After this Court ruled on summary judgment in *Rimini*
 12 *I* that local hosting and cross-use constituted infringement of Oracle's copyrights, Rimini told
 13 customers that "the Court's rulings relate to processes and software no longer in use at Rimini
 14 Street." *E.g.*, Smith Decl., Ex. 6 (P-8074 (TOLLBROS2-SUB00000447)). Rimini's revised
 15 "Process 2.0" support processes were in place both throughout the *Rimini II* time period and during
 16 the time period at issue in the contempt proceedings. The evidence and findings from the contempt
 17 proceedings show that, under Process 2.0, Rimini continued to host Oracle copyrighted material on
 18 its systems and continued to cross-use customer environments. Accordingly, the evidence and
 19 findings Rimini moves to exclude are probative of Oracle's Lanham Act claims because they
 20 directly contradict Rimini's statements to customers, proving they were false.

21 Documents produced in the contempt proceedings after the close of discovery in *Rimini II*
 22 show Rimini's statements were demonstrably false because they prove that even under Rimini's
 23 revised processes, Rimini continued to host Oracle copyrighted material on its systems,⁵ and

25 ⁴ Given that Oracle does not intend to introduce the contempt evidence and arguments about the
 26 Court's findings as propensity evidence, the Court need not consider Rimini's argument that this
 27 evidence is inadmissible under Rule 404. Mot. at 10–11.

28 ⁵ See, *e.g.*, *Rimini I*, ECF No. 1535 (Tr. at 141:4–146:21, 147:22–148:19, 149:1–152:11, 152:25–
 162:1); ECF No. 1536 (Tr. at 373:17–374:6); ECF No. 1538 (Tr. at 719:10–721:7); ECF No.
 1538 (Tr. at 717:13–717:9, 831:20–832:15, 833:1–838:2) (*Rimini I* contempt trial testimony
 discussing OREX_0013, OREX_0004, DTX-0110, OREX_0094, OREX_0096, OREX_0097).

1 continued to cross-use customer environments.⁶ Moreover, Rimini executives provided testimony
 2 during the contempt proceedings providing further support for these facts. *E.g.*, *Rimini I*, ECF No.
 3 1538 at 835:6–11 (“We should not have Oracle files on our system, and this was a case where the
 4 client clearly sent us one file that contained stored procedures for a program.”); *id.* at 807:2–808:10.
 5 Moreover, this Court, relying on the documents produced after the close of discovery in *Rimini II*
 6 and on Rimini executives’ testimony, found that Rimini continued to host Oracle copyrighted
 7 material on its systems under Rimini’s revised Process 2.0 support processes, *Rimini I*, ECF No.
 8 1548 at 7–15 (finding Rimini customers sent Rimini Oracle copyrighted PeopleSoft files, and
 9 Rimini stored them on its systems), and that Rimini continued to engage in cross-use, *e.g.*, *id.* at
 10 23–26 (“Rimini cross used City of Eugene’s development environment to support other clients”).

11 **Second**, the findings and underlying evidence from the contempt proceedings are relevant
 12 to rebut Rimini’s assertions that its revised Process 2.0 support processes and “Acceptable Use
 13 Policies” (“AUP”) prevent continued infringement of Oracle’s copyrights. Rimini says that it
 14 intends to show that, since July 2014, its Process 2.0 and support procedures prevent cross-use.
 15 ECF No. 1309 at 17–19. Documents produced in the contempt proceedings, after the close of
 16 discovery in *Rimini II*, directly contradict the facts Rimini intends to prove at trial as to how its
 17 revised processes purportedly prevent infringement.⁷ Additionally, Rimini witnesses provided
 18 testimony during the contempt proceedings that confirm Rimini’s revised Process 2.0 support
 19 processes did not prevent infringement. *E.g.*, *Rimini I*, ECF No. 1538 at 715:7–19, 717:1–3,
 20 831:20–832:15. Several of the Court’s findings provide additional probative evidence
 21 demonstrating that Rimini’s Process 2.0 still results in cross-use, and Rimini has violated its own

22

⁶ See, *e.g.*, *Rimini I*, ECF No. 1536 (Tr. at 261:3–267:22, 269:10–270:2, 275:21–284:22); ECF
 23 No. 1538 (Tr. at 639:3–647:12, 653:12–656:5, 737:15–738:17, 769:20–775:15, 785:10–789:10,
 24 797:11–799:19, 805:2–807:18, 812:15–21); ECF No. 1539 (Tr. at 997:17–999:18, 1001:18–
 1005:18, 1005:19–1008:14, 1050:23–1055:24, 1061:7–1068:1); ECF No. 1543 (Tr. at 1365:1–
 1366:24, 1371:25–1374:25) (*Rimini I* contempt trial testimony discussing OREX_0021, DTX-
 401, OREX_0028, OREX_0022, OREX_0084, OREX_0027, DTX-0302).

⁷ See, *e.g.*, *Rimini I*, ECF No. 1535 (Tr. at 124:23–128:13, 168:15–172:6); ECF No. 1536 (Tr. at
 362:17–363:4) ECF No. 1538 (Tr. at 724:13–729:14, 757:18–760:3); ECF No. 1542 (Tr. at
 1232:19–1236:25) (*Rimini I* contempt trial testimony discussing OREX_0017, OREX_0100); see
 27 also n. 5 and 6, *supra* (*Rimini I* contempt trial testimony discussing OREX_0096, OREX_0021,
 28 DTX-0401, OREX_0028, OREX_0022, OREX_0084, OREX_0027, DTX-0302).

1 AUP on multiple occasions. *Rimini I*, ECF No. 1548 at 7–15, 25–26, 29–30.

2 **Third**, to the extent that Rimini puts its state of mind at issue for the period of July 2014
 3 and after, the evidence from the contempt proceedings is relevant to rebut any suggestion by Rimini
 4 that it did not intend to violate Oracle’s copyrights. That evidence shows that Rimini’s continuing
 5 infringement of Oracle’s copyrights—under its revised Process 2.0 support processes, which were
 6 in place throughout both the *Rimini II* time period and the time period at issue during the contempt
 7 proceedings—was *not* “the result of a good faith and reasonable interpretation of the Permanent
 8 Injunction,” but instead, was “willful.” *Rimini I*, ECF No. 1548 at 17, 19, 26, 30, 49.

9 **Fourth**, Rimini plans to argue that J.D. Edwards (“JDE”) software source code in JDE
 10 licenses refers only to what Rimini calls the software’s “closed code,” ECF No. 1309 at 59, which
 11 is not human readable and which Rimini cannot as a practical matter use or access. Rimini
 12 witnesses admitted at the contempt hearing that it provides JDE support by copying what Rimini
 13 calls “open code,” which is human readable and which Rimini can access, modify, and copy, and
 14 argued that open code was not source code that may not be copied under JDE licenses. (Rimini
 15 created the terms “open code” and “closed code,” and Rimini’s own expert witness admitted that
 16 the phrases and their definitions were provided by counsel. Smith Decl., Ex. 7 (*Rimini I*, Astrachan
 17 Depo. at 245:13–17, 248:9–249:9). The Court rejected Rimini’s contentions and made the legal
 18 determination that source code refers to open code. *Rimini I*, ECF No. 1548 at 41–42. Documents
 19 produced in the contempt proceedings and related testimony from a Rimini executive show that
 20 Rimini adopted a narrow definition of source code that violates Oracle copyrights. Rimini adopted
 21 this stance after admitting in earlier documents that source code includes open code. *E.g.*, Smith
 22 Decl., Ex. 8 (OREX_1340); *Rimini I*, ECF No. 1542 at 1215:10–1218:13.

23 **B. The Probative Value of the Court’s Findings and Related Evidence from the
 24 Contempt Proceedings Outweighs Any Potential Prejudice to Rimini.**

25 The contempt evidence and findings are highly probative of issues to be determined at
 26 trial—*see supra* § A—and thus may be admitted notwithstanding some potential prejudice. *E.g.*,
 27 *Cargill Inc. v. Progressive Dairy Sols., Inc.*, 362 F. App’x 731, 733 (9th Cir. 2010) (it is permissible
 28 to allow jury to consider testimony describing existence and nature of other lawsuits where relevant

1 to claims at issue); *Kaneka Corp. v. SKC Kolon PI, Inc.*, 2015 WL 12696109, at *8 (C.D. Cal. Nov.
 2 5, 2015) (admitting administrative proceeding findings regarding patent validity as relevant
 3 evidence of defendant's good faith belief its products were not infringing and as relevant to Lanham
 4 Act claims asserting defendant's statements to customers were false and misleading); *Creswell v.*
 5 *HCAL Corp.*, 2007 WL 628036, at *7 (S.D. Cal. Feb. 12, 2007) (admitting evidence of other
 6 lawsuits to contradict claim and undermine credibility). Here, the probative value of the evidence
 7 is not outweighed by any potential prejudice. Fed. R. Evid. 403.

8 Rimini relies primarily on *Engquist v. Or. Dep't of Ag.*, 478 F.3d 985 (9th Cir. 2007), in
 9 support of its contention that the contempt evidence and findings are "highly prejudicial" because
 10 jurors are likely to give the order more weight than it warrants. Mot. at 9. *Engquist* acknowledges
 11 that there are instances in which a prior judgment is admissible under Rule 403 balancing. *Id.* at
 12 1010 (citing *U.S. v. Boulware*, 384 F.3d 794, 808 (9th Cir. 2004)). In *Boulware*, the Ninth Circuit
 13 reversed the district court's conviction where it improperly excluded a prior judgment in a related
 14 case. The Ninth Circuit acknowledged that the judgment "did not have preclusive effect," but found
 15 that the probative value of the judgment outweighed any potential prejudice under Rule 403 because
 16 it "directly contradicted the government's theory of the case," and "[a]ny danger that the jury would
 17 have given undue weight" to the judgment "could have been dealt with by a cautionary instruction."
 18 *Id.* at 808; *see also Chaudhry v. Smith*, 2020 WL 869115, at *4 (E.D. Cal. Feb. 21, 2020)
 19 (distinguishing *Engquist*, stating "there are instances where a prior case, including the verdict or
 20 damages, are relevant and admissible"). Under *Engquist*, the fact that Rimini was held in contempt
 21 is properly before the jury as it contradicts Rimini's theory of the case—that it has respected
 22 Oracle's intellectual property since 2014. Further, the Courts specific factual findings that do not
 23 use the term "contempt" show that Rimini violated both Oracle's copyrights and Rimini's policies.
 24 *Engquist* also does not support Rimini's contention that documents produced during the contempt
 25 proceedings and testimony from Rimini witnesses, which is highly probative of facts at issue in
 26 *Rimini II*, are prejudicial. *Engquist*, 478 F.3d at 1010.⁸

27 ⁸ Rimini's other cited cases also are inapposite. In *Whitewater W. Indus., Ltd. v. Pac. Surf*
 28 *Designs, Inc.*, 2019 WL 2211897, at *4-5 (S.D. Cal. May 22, 2019), although the court excluded
 evidence relating to a case that had been dismissed without prejudice in light of a settlement, the

1 Nor does the fact that the contempt judgment is currently pending on appeal eliminate the
 2 probative value of the contempt findings or affect the probative value of Rimini’s produced
 3 documents and proffered testimony. Mot. at 9 (relying on *Grace v. Apple*, 2020 WL 227404, at *3
 4 (N.D. Cal. Jan. 15, 2020)). In *Grace*, the primary factor guiding the court’s balancing analysis
 5 under Rule 403 was that the evidence and testimony regarding the verdict plaintiffs sought to
 6 introduce was being offered only as “background information” and therefore was “of minimum
 7 probative value.” *Id.* at *2. Other cases demonstrate that the lack of finality of a proceeding does
 8 not destroy the probative value of evidence relating to it where the evidence is relevant to contradict
 9 a party’s claim. *E.g.*, *Creswell*, 2007 WL 628036, at *7 (denying motion *in limine* to exclude
 10 evidence of pending lawsuit because probative value of the pending lawsuit was not substantially
 11 outweighed by the danger of prejudice or possible confusion of the jury); *Kaneka Corp.*, 2015 WL
 12 12696109, at *8 (denying motion *in limine* regarding prior and pending administrative proceedings
 13 where defendant would not be prejudiced by introduction of the evidence “because the Court will
 14 instruct the jury that the Commission’s findings are not binding on their decision”).

15 Like in *Boulware*, the findings and evidence of Rimini’s contempt “directly contradict”
 16 Rimini’s claims that its revised Process 2.0 support processes prevent infringement of Oracle’s
 17 copyrights. This evidence is highly probative of Rimini’s liability, and any potential prejudice can
 18 be “dealt with by a cautionary jury instruction.” *Id.* Contrary to Rimini’s suggestion that
 19 introduction of the contempt findings and related evidence would waste time, they will aid the jury
 20 in reaching its determination. *Wyatt Tech. Corp. v. Malvern Instruments, Inc.*, 2010 WL 11505684,
 21 at *27 (C.D. Cal. Jan. 25, 2010) (evidence from separate case not unfairly prejudicial or confusing
 22 where the allegations in the two cases mirrored each other “so a jury likely could understand them

23 _____
 24 court declined to exclude argument, testimony, or evidence relating to separate case that arose
 25 from the same “common factual nucleus of operative fact” as case being tried. Here, the
 26 contempt evidence is more similar to the evidence that was the subject of the motion *in limine*
 27 that was denied in *Whitewater*; that case therefore weighs in favor of denying Rimini’s motion.
 28 In *Marez v. Bassett*, 2011 WL 13213813, at *3 (C.D. Cal. Oct. 3, 2011), the prior verdicts were
 being offered for an improper propensity purpose; here, the contempt evidence is offered for three
 reasons that have nothing to do with Rimini’s or Ravin’s propensity to behave a certain way.
United States v. Kealoha, 2019 WL 2620004, at *5-6 (D. Haw. June 26, 2019), is inapposite
 because it relies on *Engquist* and *Marez*, and likewise fails to support Rimini’s argument.

1 without the parties spending an inordinate amount of extra time hearing evidence or testimony on
 2 the issue"); *Johnson v. Cnty. of L.A.*, 2007 WL 7269840, at *4 (C.D. Cal. Apr. 23, 2007) (denying
 3 motion to exclude prior ruling because jury may be informed "that the same conclusion they are
 4 being asked to reach has been reached by another court").

5 **IV. MOTION NO. 4: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF**
RIMINI'S SPOILATION OF EVIDENCE IN 2010

7 Rimini hopes to prohibit Oracle from introducing evidence of Rimini's destruction of a
 8 software library containing Oracle copyrighted materials and files in 2010, which the Court deemed
 9 spoliation in *Rimini I*. Rimini contends the established spoliation is irrelevant, and unduly
 10 prejudicial, character evidence. Mot. at 11–13. But Oracle does not seek to introduce this evidence
 11 to suggest any propensity to spoliate. Oracle seeks to introduce this evidence to (1) challenge the
 12 credibility of Rimini's contention that it does not presently and improperly maintain *another*
 13 software library of copyrighted Oracle materials; and (2) provide a complete picture of Rimini's
 14 deliberately [REDACTED].

15 In the *Rimini I* complaint, Oracle alleged that Rimini maintained a library of Oracle
 16 copyrighted software on Rimini's systems. *Rimini I*, ECF No. 1 ¶ 50. Rather than a simple denial,
 17 Rimini's answer contained a lengthy discussion of Oracle's allegations, including an affirmative
 18 statement that "[s]uch a 'library' never existed." *Rimini I*, ECF No. 30 ¶¶ 31–36. In fact, the
 19 software library did exist; Rimini destroyed it shortly before *Rimini I* was filed; Rimini lied about
 20 destroying it; and this Court sanctioned Rimini for spoliation. *Rimini I*, ECF No. 466 at 16–18.

21 Rimini unsuccessfully moved *in limine* to exclude evidence of the spoliation of the library
 22 in *Rimini I*. *Rimini I*, ECF No. 721 at 8. Based on the prejudice that the spoliation could cause
 23 Oracle at trial, the Court explained to the jury that "Rimini Street has a location on its computer
 24 systems that some employees refer to as the 'software library,'" and that "Rimini breached its duty
 25 to preserve relevant evidence when it deleted certain material in the software library in January
 26 2010." (Tr. at *Rimini I*, ECF No. 881, at 35. The Court instructed the jury that it may but was not
 27 required "to infer that the deleted material included evidence that was favorable to Oracle's claims
 28 and unfavorable to Rimini Street's defenses in this case." *Id.*

1 The parties dispute whether Rimini maintains an additional software library containing
 2 Oracle copyrighted materials. While Oracle will provide evidence that Rimini improperly created
 3 and maintains [REDACTED], Rimini's expert
 4 contends that “[REDACTED]” and that Oracle's
 5 contentions to the contrary are “[REDACTED].” ECF. No. 1384-1 (Cauthen Rebuttal Report) ¶¶ 134–
 6 55; ECF No. 1384-3 (Frederiksen-Cross Report) ¶¶ 415–27; ECF No. 1384-4 (Frederiksen-Cross
 7 Rebuttal Report) ¶ 148; Smith Decl., Ex. 9 (Astrachan Rebuttal Report) ¶¶ 456, 506–515. The
 8 parties also dispute Rimini's [REDACTED]
 9 [REDACTED] in decades of software development and forensic work. ECF No. 1384-3 ¶ 70.

10 **Rule 402.** Evidence of Rimini's prior maintenance of a software library is relevant to
 11 Oracle's Lanham Act claim. Evidence concerning the prior software library is also relevant to rebut
 12 the false contention that software libraries do not exist on Rimini systems, and to present the jury
 13 with a “clear and coherent story” of Rimini's ongoing practices, including [REDACTED]
 14 [REDACTED]. *Slade*, 2015 U.S. Dist. LEXIS 89717, at *4.

15 With respect to credibility, the Court in *Rimini I* denied a motion *in limine* to present
 16 evidence on the same issue: spoliation of the PeopleSoft library. As noted above, in that case,
 17 Rimini lied about the existence of the software library. Smith Decl., Ex. 11 (DTX-3011). In light
 18 of these false statements, the Court held in denying Rimini's motion *in limine* that “deletion of the
 19 library is relevant to the credibility and bias of Rimini and its employees, given repeated statements
 20 by Rimini that the library never existed, and sworn, false testimony to the same effect
 21 by Rimini employees.” 2015 LEXIS 113722 at *16. At trial, Rimini's CEO reviewed and approved
 22 the false statements in Rimini's Answers, but eventually admitted that Rimini had a library of
 23 PeopleSoft installation software. *Rimini I*, ECF No. 785 (Tr. at 242:1–23, 247:17–25).

24 **Rule 403.** Exclusion under Rule 403 “is an extraordinary remedy to be used sparingly
 25 because it permits the trial court to exclude otherwise relevant evidence. Under the terms of the
 26 rule, the danger of prejudice must not merely outweigh the probative value of the evidence,
 27 but substantially outweigh it.” *United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir. 1995) (citation
 28 omitted); *see also In re Paoli R.R. Yard PCB Litig.*, 916 F.2d 829, 859 (3d Cir. 1990).

1 The relevance of Rimini’s spoliation of its software library in 2010 is not substantially
 2 outweighed by the danger of unfair prejudice, as courts have previously held. *United States v.*
 3 *Cordero*, 973 F.3d 603, 620–21 (6th Cir. 2020) (“We have repeatedly ruled that spoliation evidence
 4 is highly probative and not sufficiently inflammatory to warrant exclusion under Rule 403.”
 5 (collecting cases)). This is especially true here where the spoliation relates to a library that Rimini
 6 falsely represented did not exist. This conduct also relates to this action because of Rimini’s
 7 marketing claims that it has remedied practices found to be improper in the parties’ prior litigation.
 8 *PBM Prods., LLC v. Mead Johnson & Co.*, 639 F.3d 111, 116, 124–25 (4th Cir. 2011) (affirming
 9 district court’s ruling that evidence of prior suits in a case in which “[t]he parties [we]re familiar
 10 combatants on the Lanham Act battlefield” was not more prejudicial than probative).

11 **Rule 404.** Contrary to Rimini’s argument regarding the inadmissibility of character
 12 evidence, Rule 404(b)(2) states that evidence of prior bad acts may be admissible for many reasons.
 13 The evidence of Rimini’s 2010 spoliation establishes that Rimini’s improper maintenance of
 14 software libraries, as well as its [REDACTED], are neither isolated nor remedied—
 15 they are part of Rimini’s ongoing business. *See Slade*, 2015 U.S. Dist. LEXIS 89717, at *4.

16 **V. MOTION NO. 5: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF**
 17 **RIMINI’S DEFICIENT** [REDACTED]

18 Rimini’s [REDACTED] are not irrelevant or unduly prejudicial, Mot. at 13–17,
 19 they are relevant and important evidence for the jury to hear, as Rimini’s deficiencies suggest a
 20 pattern of hiding improper conduct.

21 To provide support, “[REDACTED]
 22 [REDACTED].” ECF No. 1384-3 (Frederiksen-
 23 Cross Report) ¶ 66. However, whereas “[REDACTED]
 24 is a basic principle that is widely practiced throughout the software industry,” “[i]f Rimini’s claims
 25 are to be believed, Rimini [REDACTED]
 26 [REDACTED].” *Id.* ¶ 70. After reviewing Rimini’s
 27 records (and referencing those that Rimini could not or would not provide), Oracle expert
 28 Frederiksen-Cross opined “[b]ased on [her] own experience of over 40 years in software

1 development” that Rimini’s [REDACTED]
 2 [REDACTED],” *id.* ¶ 67, and that Rimini’s deficiencies rendered it “nearly impossible (or at
 3 least unworkable) to identify all instances of Rimini’s copying and distribution, through cross-use
 4 or otherwise,” *id.* ¶ 76. *See also* ECF 1384-1 (Cauthen Rebuttal Report) ¶¶ 166–77 (discussing
 5 Rimini’s “fail[ure] to [REDACTED]
 6 [REDACTED]” and noting “[REDACTED]
 7 [REDACTED] The jury is entitled to draw
 8 inferences from Rimini’s “[REDACTED], and
 9 the probative value of those [REDACTED] far outweighs any potential prejudice. *See* ECF No. 1384-3
 10 (Frederiksen-Cross Report) ¶ 70.

11 **Rule 402.** Rimini’s argument focuses on the relevance of recent “spoliation.” Mot. at 15–
 12 16. However, Oracle’s experts do not offer any spoliation opinions.

13 **Rule 403.** Rimini contends there are two reasons why the Court should exclude this
 14 evidence despite its probative value—both of which fail. First, Rimini refers to the objective
 15 evidence of Rimini’s [REDACTED] as “speculative” and claims it “suggests bad faith
 16 without any reasonable basis.” Mot. at 16. Oracle’s expert testimony is not based on speculation;
 17 it is based on a combination of facts, detailed analysis of Rimini’s [REDACTED], and the
 18 testimony of Rimini’s own witnesses. For example, Frederiksen-Cross analyzes the specific
 19 [REDACTED] that Rimini uses for each Oracle product, providing [REDACTED]
 20 [REDACTED]. ECF No. 1384-3 (Frederiksen-Cross Report) §§ VII–XI (PeopleSoft); XII (E-
 21 Business Suite); XIII (JD Edwards); XIV (Siebel); XV (Oracle Database). She relied on Rimini’s
 22 witnesses, who effectively admit to Rimini’s [REDACTED], to reach her conclusions. *Id.*
 23 ¶ 139 n.73 (citing the deposition of a Rimini employee who could not recall how the [REDACTED]
 24 [REDACTED] and whether they were [REDACTED], as support for the conclusion
 25 that [REDACTED]
 26 [REDACTED] *id.* ¶ 384 (stating “[REDACTED]
 27 [REDACTED],” and citing Rimini
 28 Group Vice President for Global Support Mackereth’s deposition as indicating that Rimini

1 employees “testified that they [REDACTED]
 2 [REDACTED]”). If Rimini would like to challenge these expert opinions as “speculative,”
 3 it is free to do so via cross-examination, and the jury can make its own decision thereafter.

4 Second, Rimini wrongly argues that the Court should resolve this “discovery dispute”
 5 before trial to avoid “confus[ing] the jury.” Mot. at 16. Oracle is not seeking to rehash discovery
 6 disputes before the jury. Rather, Oracle—through its experts—plans to inform the jury that
 7 Rimini’s [REDACTED] any technology company
 8 our experts have seen. When Rimini argues, as it has in the past, that Oracle has only pointed to a
 9 limited number of examples of improper conduct, the jury should be able to learn that Rimini has
 10 adopted [REDACTED] that Oracle believes are intended to hide its improper conduct.
 11 Given the evidence suggests Rimini’s deficiencies are deliberate, their probative value far
 12 outweighs any threat of prejudice. *United States v. Pafaite*, 2022 WL 837489, at *5 (M.D. Pa. Mar.
 13 21, 2022) (acknowledging “acts of stealth and deception” “have substantial probative value”).

14 **VI. MOTION NO. 6: THE COURT SHOULD NOT EXCLUDE JUDGE HICKS’S**
 15 **HOLDINGS THAT ARE RELEVANT TO ORACLE’S CLAIMS.**

16 Rimini’s moves to exclude judicial holdings from this Court in *Rimini I* that are directly
 17 relevant to Oracle’s Lanham Act claim. Rimini does not challenge the relevance of these holdings.
 18 Instead, it refers to these holdings as “hearsay” and argues they are “unfortunate” and “prejudicial.”
 19 As explained below, these rulings are not hearsay, and they are fair and accurate characterizations
 20 of Rimini’s conduct, so they are not unduly prejudicial either.

21 Rimini has offered the *Rimini I* summary judgment rulings as the reason it claims to have
 22 changed its support practices. As noted in Rimini’s motion *in limine* No. 7, Rimini has said in
 23 Court, and its CEO has testified, that the summary judgment rulings in *Rimini I* explain Rimini’s
 24 conduct in this case. And Rimini tells customers falsely that it is complying with these orders.

25 Rimini falsely asserts that Judge Hicks’s finding that Rimini engaged in “massive theft” of
 26 Oracle’s intellectual property” was “unfair and unnecessary to any legal conclusion.” Mot. at 17
 27 (citing *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F. Supp. 3d 1108, 1128 (D. Nev. 2014)). In fact, this
 28 finding was necessary to Judge Hicks’s granting Oracle summary judgement on Rimini’s

1 defamation claim. Far from being an “unnecessary” comment, in filing a defamation claim, Rimini
 2 sought a ruling from this Court on the issue of whether it had, in fact, engaged in “massive theft”
 3 of Oracle’s intellectual property, citing that language *in haec verba*. While Rimini doubtless
 4 believes it was “unfortunate” that this Court found that Oracle’s statement was true, “truth is an
 5 absolute defense to defamation.” *Id.* at 1131.

6 Rimini claims that Judge Hicks “felt compelled to essentially withdraw” or “later qualified”
 7 these statements, which it says were “unfair and unnecessary,” Mot. 6 at 17—but that is misleading.
 8 In a later order, Judge Hicks clarified that, while the summary judgment order did not resolve “a
 9 separately pled cause of action” of *intentional* theft, it did hold that statements that “Rimini had
 10 engaged in ‘massive theft’” were true because “there is no meaningful distinction between ‘theft’
 11 and ‘copyright infringement’ in the Ninth Circuit.” *Oracle USA, Inc. v. Rimini St., Inc.*, 2014 WL
 12 5285963, at *1 (D. Nev. Oct. 14, 2014). Judge Hicks did not withdraw his summary judgment
 13 order based on the truthfulness of Rimini’s “massive theft.”

14 Rimini also takes issue with Judge Hicks’s statement in holding a permanent injunction was
 15 warranted because “Rimini’s business model was built entirely on its infringement of Oracle’s
 16 copyrighted software.” *Oracle USA, Inc. v. Rimini St., Inc.*, 209 F. Supp. 3d 1200, 1208–09 (D.
 17 Nev. 2016). Rimini does not allege this accurate holding was ever “withdrawn”—it was not.

18 **Rule 802.** These *Rimini I* holdings are not inadmissible hearsay because they will not be
 19 “offered to prove the truth of the matters asserted,” *United States v. Boulware*, 384 F.3d 794, 806
 20 (9th Cir. 2004). Rimini raised a defamation claim regarding the statement “massive theft,” and the
 21 Court held Rimini’s claim failed as a matter of law—because the statement was true. Referring to
 22 that prior holding is the same as referring to the “legal effect” of the prior order, and that legal effect
 23 is not hearsay as a matter of law. *See United States v. Stinson*, 647 F.3d 1196, 1210–11 (9th Cir.
 24 2011) (a prior order may be offered “to establish its legal effect”); *Boulware*, 384 F.3d at 806 (citing
 25 judgment to establish ownership and legal obligations—the legal effect of the rulings—is
 26 appropriate because “a prior judgment is not hearsay ... to the extent that it is offered as legally
 27 operative verbal conduct that determined the rights and duties of the parties”); *id.* at 806–07
 28 (holding hearsay rule “did not prohibit Boulware from introducing the state court judgment”);

1 *United States v. Sine*, 493 F.3d 1021, 1036 n.12 (9th Cir. 2007) (noting government “could have
 2 referred to [the prior] order in more limited ways that would not have constituted the use of
 3 hearsay,” such as asking Sine “about the fact that [the prior] order denied recovery against” certain
 4 parties, as that denial would help prove claims); *Santa Maria City Firefighters Union v. City of
 5 Santa Maria*, 2022 WL 2198707, at *6 (C.D. Cal. Feb. 9, 2022), *modified on reconsideration*, 2022
 6 WL 2200420 (C.D. Cal. May 9, 2022) (party may introduce decision to show practice “was a
 7 violation of law” and was “adjudged adverse and retaliatory” because decisions introduced as
 8 “legally operative verbal conduct” are not hearsay).

9 The cases cited by Rimini do not prohibit introducing prior judgments to show their
 10 holdings or legal effects. Far from it. They show that earlier court decisions are typically excluded
 11 only where they dealt “with statements that recapitulate in detail others’ testimony and
 12 declarations” or go to the credibility of the party or witness. *See Sine*, 493 F.3d at 1036; *Ensorce
 13 Invs. LLC v. Willis*, 2020 WL 532376, at *1 n.1 (S.D. Cal. Feb. 3, 2020) (decision inadmissible
 14 because it had “little to no relevance” to the issues in the case and was “relevant only for their
 15 criticism of Defendant’s credibility”). Where not involving facts going to credibility, however,
 16 court orders are admissible—even for cross-examination. *See Sine*, 493 F.3d at 1036 n.12.⁹

17 The “massive theft” statement is not hearsay for another, more basic reason too. Rimini
 18 asked the Court to determine whether it was defamation—i.e., whether it was a “verbal act”—so
 19 even before the Court ruled on it, the statement was not hearsay under Federal Rule of Evidence
 20 801(c). *See Schindler v. Seiler*, 474 F.3d 1008, 1010 (7th Cir. 2007) (“verbal acts (e.g., words of
 21 contract or slander) are not hearsay”); *Goff v. Washington Cnty.*, No. 03-268, 2005 WL 8165291,
 22 at *5–6 (D. Idaho Mar. 10, 2005) (noting defamatory statement would be verbal act if claim filed).

23 **Rule 403.** Admitting accurate descriptions of Rimini’s prior conduct would not lead to
 24 unfair prejudice, even though the descriptions are unflattering. *See, e.g.*, *United States v. Abel*, 469

25 ⁹ Moreover, Rimini’s cases involve prior decisions in different courts (often state courts) that
 26 involved “some of the same parties,” *see United States v. Jones*, 29 F.3d 1549, 1554 (11th Cir.
 27 1994); *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993), not cases (like this one) between the exact
 28 same parties in the same court—and certainly not cases (like this one) giving rise to collateral
 estoppel. *See* 2 McCormick on Evid. § 298 (8th ed.) (noting some courts are unwilling to admit
 previous judgment *unless res judicata or collateral estoppel apply*).

1 U.S. 45, 54 (1984) (“precise description of the gang as a lying and murderous group” is admissible);
 2 *Smith v. Baker*, 2012 WL 4468624, at *14 (D. Nev. Sept. 25, 2012) (remarks that defendant claimed
 3 were “inflammatory” were admissible as “an accurate description of Smith’s acts and inferences
 4 arising therefrom”). Nothing in Rule 403 supports Rimini’s attempt to strip from the trial true
 5 statements describing its unauthorized copying of another’s software for profit.

6 And Judge Hicks’s prior descriptions of Rimini’s conduct are plainly accurate. As the Court
 7 explained, “there is no meaningful distinction between ‘theft’ and ‘copyright infringement.’ One
 8 of the leading Ninth Circuit copyright infringement cases refers to the copyright infringement
 9 defendant as an ‘ordinary thief.’” *Oracle*, 6 F. Supp. 3d at 1131 (quoting *Polar Bear Prods., Inc.*
 10 v. *Timex Corp.*, 384 F.3d 700, 709 (9th Cir. 2004)); *see also Metro-Goldwyn-Mayer Studios Inc. v.*
 11 *Grokster, Ltd.*, 545 U.S. 913, 961 (2005) (Breyer, J., concurring) (“[D]eliberate unlawful copying
 12 is no less an unlawful taking of property than garden-variety theft.”); *Uber Techs., Inc. v. Doe*,
 13 2015 WL 1926291, at *3 (N.D. Cal. Apr. 27, 2015) (“Infringement suits, too, involve theft.”).

14 While some cases have held that a judge’s prior statements were prejudicial “because ‘jurors
 15 are likely to defer to findings and determinations relevant to credibility,’” *Ensorce*, 2020 WL
 16 532376, at *1 (quoting *Sine*, 493 F.3d at 1033),¹⁰ the statements here do not involve Rimini’s
 17 credibility. The “massive theft” statement was integral to the Court’s rejection of Rimini’s
 18 defamation counterclaim. Moreover, Rimini put its own reputation at issue by asking the Court to
 19 hold whether that statement was defamation. Having lost on that point in this Court, Rimini is now
 20 claiming that jurors should hear nothing about issues that *Rimini* raised. The “prejudice” Rimini
 21 faces is that its conduct is so egregiously bad that if the jury learns about it, it likely will hurt them,
 22 but that is not a Rule 403 issue. Similarly, the holding that Rimini’s business model was “entirely
 23 built on infringement” goes to Rimini’s practice and intent, and the need for a permanent injunction.

24 The Ninth Circuit explained that its “determination that reference to facts found in a judicial

25
 26 ¹⁰ Rimini’s other cases deal with prior judicial decisions on credibility, too. *See, e.g., United States*

27 v. *Hansen*, 2021 WL 2434561, at *3 (W.D. Wash. June 15, 2021) (holding Rule 403 prejudice
 28 because the comments went to “credibility”); *Barten v. State Farm Mut. Auto. Ins. Co.*, 2015 WL
 11111309, at *3 (D. Ariz. Apr. 8, 2015) (holding prior statements against expert’s credibility as
 “neutral” were prejudicial under Rule 403).

1 opinion can unfairly prejudice a party" when those facts involve "credibility" does "not mean that
 2 admission of such facts will always fail the balancing test of Rule 403." *Sine*, 493 F.3d at 1034. In
 3 *Sine*, the government had also conceded the credibility-related facts "were of little probative value,"
 4 unlike here, where they are squarely relevant to Oracle's Lanham Act claim. While Rimini may
 5 think statements regarding its culpability are "unfortunate," they are plainly relevant to Oracle's
 6 claims now and thus more probative than prejudicial.¹¹

7 **VII. MOTION NO. 7: MOTION TO PRECLUDE USE OF EVIDENCE OF CHANGE IN**
PROCESSES TO ESTABLISH LIABILITY OR WILLFULNESS

9 Rimini's motion under Rule 407 seeks to prohibit Oracle from arguing that Rimini's
 10 changes from Process 1.0 to Process 2.0—evidence of which Rimini concedes is admissible—
 11 "show or contribute to showing liability or Rimini's mental state." Mot. at 19. The motion should
 12 be denied because Rule 407 is inapplicable for remedial measures purportedly taken to comply with
 13 legal mandates. Moreover, even if Rule 407 is applicable, the Rule permits Oracle to use Rimini's
 14 changes to impeach Rimini's witnesses and establish liability for Oracle's Lanham Act claims.
 15 And, if Rimini puts its intent at issue, Oracle should be permitted to rebut any such evidence,
 16 including with evidence of process changes. Finally, the motion should be denied because there
 17 are factual disputes about whether Rimini's Process 2.0 is a remedial measure.

18 Rimini asserts that it changed from Process 1.0 to 2.0 not as a remedial measure before a
 19 finding of liability, but in response to the *Rimini I* summary judgment order, and also asserts that it
 20 "further modified Process 2.0 in response to the injunction." Mot. at 19–20. Rimini initiated this
 21 case with its claim for declaratory relief alleging that "Rimini Street modified its services to
 22 discontinue use of the processes the Court found to be infringing in its February 13, 2014 [Summary
 23 Judgment] Order" and "[b]y July 31, 2014, Rimini Street had completed its migration to processes
 24 compliant with the Court's February 13, 2014 Order." ECF No. 1 ¶ 8. Ravin also has asserted
 25 [REDACTED]. Smith Decl., Ex. 12 (Ravin 2/15/18 Dep.)
 26 44:11–45:3, 49:24–50:6, 53:18–54:14. And [REDACTED]

27 ¹¹ Rimini also cites *Chein v. Shumsky*, 373 F.3d 978, 989 n.6 (9th Cir. 2004) (en banc), which is
 28 nothing like this case. It merely held that a superior court judge could not testify as an expert
 witness and tell the jury how to interpret a defendant's statement. *Id.*

1 [REDACTED] . *Id.* at 27:12–24, 28:18–29:1, 32:22–33:6.

2 Courts routinely admit evidence and argument regarding remedial measures taken by a
 3 defendant in response to court orders or to comply with the law or a government mandate. Rule
 4 407 is intended to support “a social policy of encouraging people to take, or at least not discouraging
 5 them from taking, steps in furtherance of added safety.” Advisory Committee Notes on Proposed
 6 Rules, Fed. R. Evid. 407. But Rule 407’s policy is not furthered, and therefore the rule’s exclusions
 7 are inapplicable, where “the defendant has not voluntarily participated in the subsequent measure
 8 at issue” because “the admission of that measure into evidence does not ‘punish’ the defendant for
 9 his efforts to remedy his safety problems.” *In re Aircrash in Bali, Indonesia*, 871 F.2d 812, 817
 10 (9th Cir. 1989) (admission of report on investigation defendant “was legally obligated to cooperate
 11 with” did not violate Rule 407); *see also Novick v. Shipcom Wireless, Inc.*, 946 F.3d 735, 740 (5th
 12 Cir. 2020) (Rule 407 inapplicable for remedial measures defendant was “legally obligated to take”);
 13 *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1343 (5th Cir. 1978) (invoking [Rule 407’s] exclusion
 14 policy inappropriate where estimate was prepared because the remedial measure was to be required
 15 by a superior authority); *Olivier v. Exxon Mobil Corp.*, 2022 WL 3010691, at *1–2 (M.D. La. July
 16 29, 2022) (Rule 407 is inapplicable for remedial measures taken to comply with legal mandates).

17 Because Rimini contends all of its changes in process were done in response to a court
 18 order, they were not “voluntary” remedial measures. Rule 407 does not apply. *E.g., Gilanian v.*
 19 *City of Boston*, 431 F. Supp. 2d 172, 177–78 (D. Mass. 2006) (evidence of policy changes made in
 20 response to court decision finding prior policy unlawful “is admissible for any reason”); *United*
 21 *States v. Balwani*, 2022 WL 597040, at *5–6 (N.D. Cal. Feb. 28, 2022) (action defendant “believed”
 22 was necessary was “involuntary and not a remedial measure under Rule 407” even though the
 23 agency “did not specify how [defendant] should cure the deficiencies”); *Gray v. Golden Gate Nat'l*
 24 *Recreational Area*, 866 F. Supp. 2d 1129, 1140–41 (N.D. Cal. 2011) (that defendant failed to
 25 comply with legal requirements for years does not make new efforts to comply voluntary).

26 In addition, the changes in process that Rimini made following the *Rimini I* summary
 27 judgment and injunction orders contradict Rimini’s statements to customers that Rimini had already
 28 ceased the conduct ruled unlawful in *Rimini I*. Thus, even if the changes were remedial measures

1 within the scope of Rule 407, which they are not, Oracle is permitted to use the changes to impeach
 2 Rimini's witnesses and establish liability for Oracle's Lanham Act claims. Fed. R. Evid. 407 ("the
 3 court may admit this evidence for another purpose, such as impeachment").

4 Oracle does not seek to use Rimini's subsequent modification of Process 1.0 to "prove that
 5 the original process infringed . . . with respect to Process 1.0 support for 'gap customers.'" Mot. at
 6 22. A jury found that Rimini's Process 1.0 infringed Oracle's copyrights and the Court
 7 subsequently held on summary judgment in this case that the jury's findings establish liability with
 8 respect to the gap customers. ECF No. 1253 at 3, 21–29.¹² The only issue with respect to gap
 9 customers is the amount of damages to be awarded. The facts describing Process 1.0 will be
 10 relevant to the extent of such damages.

11 In addition, if Rimini puts its state of mind at issue during trial, Oracle should be permitted
 12 to rebut Rimini's arguments and evidence with Oracle's own arguments regarding Rimini's state
 13 of mind, including based on Rimini's changes in processes. Rule 407; *see also, e.g., McConnell v.*
 14 *Wal-Mart Stores, Inc.*, 995 F. Supp. 2d. 1164, 1174 (D. Nev. 2014) (if defendant "opens the door"
 15 to otherwise irrelevant arguments, the Rule 407 analysis "will change").

16 Finally, Rimini argues that "Rimini 2.0" was a remedial measure, and defines 2.0 as follows:

17 Under Process 2.0, Rimini supports customers on the client's own
 18 environment located on the client's own systems (to address "local
 19 hosting") and no longer relies on generic environments to develop
 20 updates for multiple clients (to address "cross-use"). That makes
 21 Rimini's change from Process 1.0 to Process 2.0 a subsequent
 22 remedial measure.

23 Mot. at 22. Rimini cites its own description of the case in the Pretrial Order to support this
 24 statement. But there are factual disputes about the measures Rimini took, and when, including with
 25 respect to cross-use. Motions in limine should not be used to resolve factual disputes or to weigh
 26 evidence. *See, e.g., Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004).
 27 And this Court already has held that the "Migration" entailed more copying of already-infringing
 28 Oracle software for which there is no license defense. ECF No. 1253 at 92.

29
 30 ¹² Oracle will also establish that Rimini has no license defense for █ additional customer
 31 environments created during this gap period but not addressed by the Court's order.

1 **VIII. MOTION NO. 8: MOTION TO PRECLUDE USE OF EVIDENCE FROM *RIMINI I*
2 TO CONTRADICT THE *RIMINI I* SPECIAL VERDICT FINDINGS.**

3 The Court should deny Rimini's motion that seeks to prohibit Oracle from using evidence
4 from *Rimini I* to "relitigate issues that have already been adjudicated" and "contradict the jury's
5 verdict and special findings in that case." Mot. at 22. As Oracle told Rimini on several meet and
6 confers, it has no intention of re-trying *Rimini I*. Rather, as stated in the Joint Pretrial Order,
7 Oracle's *Rimini I* trial testimony designations and exhibits are appropriately tailored to demonstrate
8 the aspects of Rimini's infringing support practices that are relevant to Oracle's numerous
affirmative remaining claims in *this* case. ECF No. 1309 at 77.

9 Oracle does not intend to relitigate the issue of Ravin and Rimini's willfulness from the
10 *Rimini I* trial. State-of-mind is irrelevant to Oracle's copyright infringement claims in this case. If
11 Rimini puts its state of mind at issue, however, evidence of Rimini' willfulness from the *Rimini I*
12 record is relevant and admissible for impeachment purposes, and neither the Seventh Amendment
13 nor the doctrine of collateral estoppel bar Oracle from using evidence from the *Rimini I* litigation
14 to impeach Rimini's false statements about its state of mind as to Process 2.0.

15 Rimini also argues that the special verdict form in *Rimini I* found that the best measure of
16 Oracle's actual damages for Rimini's infringement was a fair market value license and that Oracle
17 suffered no lost profits, and Rimini gained no profits, as a result of the infringement found at the
18 *Rimini I* trial. Mot. at 23. To the extent that Rimini seeks to preclude Oracle from recovering lost
19 profits damages related to the 47 "gap customers" for whom liability was established by the Court
20 in its summary judgment order, the motion should be denied. The Court already has ruled that
21 Oracle may argue for either lost profits or fair market value license damages related to these
22 customers at the *Rimini II* trial. ECF No. 1253 at 80–81.¹³

23 **A. The Court Should Deny Rimini's Motion to Preclude Willfulness Evidence
24 from *Rimini I* as Moot.**

25 Rimini's motion for preclusion of willfulness evidence from *Rimini I* attempts to create
26 issues where none exist; Rimini's state of mind is not relevant in this case. In *Rimini I*, for the sole

27

28 ¹³ Rimini seeks an order requiring Oracle to abide by Rules 402, 404, and 802 as it relates to all
 exhibits and testimony from *Rimini I*. Such an order is unnecessary as Oracle is already required
 to abide by the Federal Rules of Evidence.

1 purpose of determining the amount of Oracle’s statutory damages, which Oracle did not accept, the
 2 jury found that Rimini’s infringement of Oracle’s copyrighted works prior to 2012 was not
 3 “willful,” but “innocent.” *Rimini I*, ECF No. 896 at 5–6. In this case, however, Oracle seeks only
 4 *actual* damages for its copyright infringement claims, so intent is irrelevant. Oracle has withdrawn
 5 any claim for statutory damages. It has also moved to exclude as irrelevant all evidence and
 6 argument regarding “innocent infringement,” either in connection with the jury’s finding in *Rimini*
 7 *I* or the conduct at issue here. ECF No. 1378 at 16–18. If for any reason Rimini is allowed to
 8 present evidence or argument that its prior infringement was “innocent,” Oracle should be allowed
 9 to present evidence and argument that, as Judge Hicks previously ruled, “Rimini’s business model
 10 was built entirely on its infringement of Oracle’s copyrighted software” and Rimini engaged in
 11 “theft.” *See Oracle*, 6 F. Supp. 3d at 1128; *Oracle*, 209 F. Supp. 3d at 1208–09.

12 Otherwise, to the extent that Oracle offers evidence from the *Rimini I* record, it will do so
 13 for purposes other than proving Rimini’s willfulness as to its pre-July 2014 infringement or its
 14 continuing infringement of Oracle’s copyrights in this case. Accordingly, Rimini’s motion with
 15 respect to willfulness should be denied as moot.

16 **B. If Rimini Opens the Door to State of Mind Evidence as to Process 2.0, Oracle
 17 Should be Permitted to Rebut and Impeach Witness Testimony Using Evidence
 18 of Willfulness.**

19 Rimini has indicated that it plans to prove at trial that it “believed and currently believes
 20 that its practices with respect to Oracle’s intellectual property were authorized by its clients’ license
 21 agreements,” and that at “*all times*, it has intended to respect, and has respected, Oracle’s
 22 intellectual property rights.” ECF No. 1309 at 19 (emphasis added). Rimini appears to intend to
 23 use the *Rimini I* jury’s “innocent infringement” finding with respect to Process 1.0 to argue that its
 24 repeated infringement under Process 2.0 was again an innocent mistake. If Rimini puts its state of
 25 mind at issue regarding its practices under Process 2.0, the Court should permit Oracle to rebut and
 26 impeach Rimini witness testimony under Fed. R. Evid. 607 and 613(b) using evidence probative of
 27 willfulness—including prior witness testimony and exhibits from the *Rimini I* record. Neither the
 28 Seventh Amendment nor collateral estoppel bar such use of the *Rimini I* evidence.

 In the Seventh Amendment cases that Rimini cites for support, the court determined whether

1 *bifurcation of issues in the same action*—such as separating liability from damages, comparative
 2 negligence, or other affirmative defenses—caused the *same issue* to be re-examined by different
 3 juries. Neither bifurcation nor the constitutional concerns that it raises are present here.
 4 Additionally, the Seventh Amendment does not bar the *Rimini II* jury from examining evidence,
 5 including evidence from *Rimini I*, that is relevant to Rimini’s willfulness regarding its copyright
 6 infringement under Process 2.0—an entirely different and separate issue that was never tried to the
 7 first jury. And to the extent Oracle uses evidence from *Rimini I* to impeach false testimony about
 8 Rimini’s state of mind regarding Process 2.0, the *Rimini II* jury need not reconsider, let alone
 9 contradict, the *Rimini I* jury’s finding about Rimini’s state of mind.

10 Furthermore, the doctrine of collateral estoppel does not preclude Oracle from introducing
 11 evidence from *Rimini I* for impeachment purposes to show that Rimini engaged in willful copyright
 12 infringement under Process 2.0. The issues are not “identical in both proceedings.” *Oyeniran v.*
 13 *Holder*, 672 F.3d 800, 806 (9th Cir. 2012). Rimini’s state of mind with respect to its infringing
 14 conduct under Process 2.0 is not identical to Rimini’s state of mind with respect to its copyright
 15 infringement under Process 1.0. While the law defining “willfulness” and “innocence” with respect
 16 to copyright infringement is the same, the evidence and argument that will be presented in this case
 17 will be different from that presented in *Rimini I* because the infringing processes, timeframe, and
 18 customers are different, and some of the copyrights at issue are different. Additionally, pretrial
 19 preparation and discovery in *Rimini I* could not have reasonably embraced the issue of Rimini’s
 20 intent with respect to Process 2.0 because fact discovery in *Rimini I* closed in December 2011, and
 21 Rimini claims that it completed the transition from Process 1.0 to Process 2.0 by July 31, 2014.

22 **C. The Court Has Previously Ruled That Oracle May Argue for Lost Profits
 23 Damages Related to the “Gap Customers.”**

24 The Court should deny Rimini’s motion to the extent that it seeks to preclude Oracle from
 25 recovering lost profits for the 47 “gap customers” that Rimini gained between September 28, 2011,
 26 the date of Rimini’s last disclosed customer list prior to the close of discovery in *Rimini I*, and
 27 February 13, 2014, the end of the *Rimini I* damages period. Rimini raised the very same issue by
 28 partial summary judgment motion four years ago. ECF No. 913 at 29–30. Rimini lost that motion.

1 ECF No. 1253 at 80–81 (“whether Oracle is entitled to lost profits or fair market value license
 2 damages is a distinct question related to the specific at issue gap customers and to be decided by
 3 the jury. While a reasonable jury in [*Rimini I*] concluded that fair market value license damages
 4 was proper as it related to the 228 customers at issue there, a reasonable jury could find that as it
 5 relates to these distinct gap customers lost profits is proper.”).

6 **IX. MOTION NO. 9: THE COURT SHOULD NOT EXCLUDE HYPOTHETICAL**
QUESTIONS THAT ASSUME RIMINI HAS INFRINGED

8 In depositions of representatives of customers who left Oracle for Rimini, and are therefore
 9 part of Oracle’s damages claims, Oracle asked customer representatives [REDACTED]

10 [REDACTED]
 11 [REDACTED]. Rimini’s customers answered this question [REDACTED]
 12 [REDACTED]
 13 [REDACTED]. Smith Decl., Ex. 13 (Bonfanti Depo.) at 75:21–25; Ex. 15 (Hovsepian Depo.) at
 14 42:4–14; Ex. 16 (Jackson Depo.) at 105:25–107:8; Ex. 17 (Jacobs Depo.) at 40:22–41:3; Ex. 18
 15 (Jameson Depo.) at 67:25–69:1; Ex. 19 (Jamieson Depo.) at 83:23–84:5; Ex. 20 (Myers Depo.) at
 16 126:24–128:7; Ex. 21 (Ownbey Depo.) at 67:3–68:1; Ex. 22 (Sullivan Depo.) at 51:8–52:23; Ex.
 17 23 (Sutton Depo.) at 58:3–10; Ex. 24 (Treece Depo.) at 32:15–33:23; Ex. 25 (Valdez Depo.) at
 18 65:22–66:14; *see also* Ex. 10 (White Depo.) at 30:14–21. Oracle asked essentially the same
 19 questions to Rimini customers in *Rimini I* and the Court admitted the testimony, albeit with a
 20 limiting instruction that it was only admissible to prove causation, to which Oracle does not object.
 21 *Rimini I*, ECF No. 781 (Tr. at 28:13–24).

22 Because it is harmful to its case, Rimini again seeks to preclude Oracle from presenting this
 23 evidence, asserting (just as it did unsuccessfully in *Rimini I*) that the questions are improper
 24 “hypotheticals” that are outside the capacity of “lay witness testimony” and “irrelevant to the facts
 25 Oracle must prove at trial.” Mot. at 28. The Court should follow its ruling in *Rimini I*. The customer
 26 witnesses had foundation to testify; they were designated by Rimini’s customers as having
 27 knowledge regarding [REDACTED]. Rimini
 28 infringed Oracle’s copyrights in “Process 1.0,” and Oracle will present extensive evidence showing

1 that Rimini's "Process 2.0" is no better, so the questions were not "██████████." Finally, the
 2 questions are relevant to causation and damages and do not unfairly prejudice Rimini.¹⁴

3 **Rules 602 and 701.** Courts have held that where, as here, questions to lay witnesses are
 4 "limited by the factual foundation laid in earlier admitted testimony" and based on "facts that ha[ve]
 5 been independently established in the record," they are not speculative. *Cuti*, 720 F.3d at 458; *see*
 6 *also Atlanta Channel, Inc. v. Solomon*, 2021 WL 4243383, at *5 (D.D.C. Sept. 17, 202). In *Cuti*
 7 for example, the Second Circuit held that answers to hypothetical questions that asked accountant
 8 witnesses how, if at all, they would have changed their accounting of certain transactions if they
 9 had known all of the facts underlying those transactions, were permissible. *Id.*

10 As in *Cuti*, the questions to Rimini's customers had a proper foundation. Each of the
 11 witnesses had knowledge of ██████████

12 ██████████. *See* Smith Decl. Ex. 19 (Jamieson Depo.) at 24:18–
 13 22. This distinguishes this case from *SEC v. Ambassador Advisors*, LLC, 2022 WL 2188145, at
 14 *3 (E.D. Pa. Feb. 28, 2022), *United States v. Sanft*, 2021 WL 5770292, at *2 (W.D. Wash. Dec. 6,
 15 2021) and *Hamilton v. AVPM Corp.*, 593 F. App'x 314, 319 (5th Cir. 2014), as all those cases
 16 involved situations where courts precluded witnesses from testifying about the potential actions or
 17 reactions of *third parties* with which they were unaffiliated. Oracle's questions elicited answers
 18 based on the witnesses' personal knowledge. *See Atlanta Channel Inc.* 2021 WL 4243383, at *5.

19 The law is not "clear that Rule 701 bars lay witnesses from answering hypothetical
 20 questions," as Rimini asserts. Mot. at 28. The Court in *Cuti* allowed just that, 720 F.3d at 459, and
 21 the cases that Rimini cites for this proposition are not as broad as it suggests. In those cases, the
 22 courts did not say that lay opinion witnesses could never be posed hypothetical questions, but only
 23 those that require "specialized knowledge" or were not within the witness' perception should be

24 ¹⁴ Rimini's appendix to Motion No. 9 also includes customer testimony having nothing to do with
 25 any "hypothetical" questions, including testimony regarding ██████████

26 *. See* Smith Decl., Ex. 18 (Jameson Depo.) at 68:8–15, Ex. 19 (Jamieson Depo.) at 84:19–23; Ex. 22 (Sullivan
 27 Depo.) at 51:5–23; Ex. 23 (Sutton Depo.) at 59:3–10; and Ex. 24 (Treece Depo.) at 33:4–19. And
 28 one of Rimini's excerpts also includes testimony regarding ██████████

Smith Decl., Ex. 24 (Treece Depo.) at 33:25–34:1; 34:21–35:11.

1 excluded. *See Sinkovich*, 232 F.3d 200, 203–04. This evidence will be “helpful to the jury” under
 2 Rule 701(b). Evidence of what Rimini’s customers [REDACTED]

3 [REDACTED] is directly relevant to the element of causation in Oracle’s
 4 claims and will be “helpful” to the jury under Rule 701(b).

5 **Rules 402 and 403.** This evidence is relevant to the element of causation in Oracle’s claims,
 6 including Oracle’s Lanham Act claim, and is not unfairly prejudicial to Rimini.

7 **X. MOTION NO. 10: THE COURT SHOULD NOT EXCLUDE EVIDENCE OF**
RIMINI’S SOFTWARE LIBRARY

8 When the parties disputed the relevance of Rimini’s software library in *Rimini I*, the Court
 9 determined that evidence of the software library was not only admissible, but that its incomplete
 10 status warranted a jury instruction. *See Rimini I*, ECF No. 881 at 35. Rimini now acts as if the
 11 software library is [REDACTED]

12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]. *See* ECF No. 1384-1 (Cauthen Rebuttal Report) ¶¶ 134–55; ECF No. 1384-3
 15 (Frederiksen-Cross Report) ¶¶ 415–27; ECF No. 1384-4 (Frederiksen-Cross Rebuttal Report)
 16 ¶ 148. Within the [REDACTED]
 17 [REDACTED]” ECF No. 1384-3 ¶ 416.

18 **Rule 402, Rule 403, and Rule 404.** Especially in light of Rimini’s claims that evidence of
 19 its software library is “stale,” Mot. at 29, because the software library is [REDACTED] *id.*
 20 at 11, this evidence is crucial to the narrative underlying Oracle’s Lanham Act claim. *See Slade*,
 21 2015 WL 4208634, at *1–2 (admitting “evidence necessary to tell a clear and coherent story” of
 22 abuse). The facts show that Rimini [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]. This evidence is relevant to both Rimini’s [REDACTED]

26 [REDACTED]
 27 [REDACTED]. Moreover, all of Rimini’s arguments for exclusion relate to only Rimini’s [REDACTED]
 28 [REDACTED]. *See* Mot. at 29.

1 DATED: September 30, 2022

MORGAN, LEWIS & BOCKIUS LLP

2
3 By: */s/ Benjamin P. Smith*
4 Benjamin P. Smith

5 Attorneys for Plaintiffs and Counterdefendants
6 Oracle International Corporation and Oracle
7 America, Inc.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2022, I electronically transmitted the foregoing **ORACLE INTERNATIONAL CORPORATION AND ORACLE AMERICA, INC.'S RESPONSE TO RIMINI'S OMNIBUS PRE-TRIAL MOTIONS IN LIMINE** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

DATED: September 30, 2022

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Benjamin P. Smith
Benjamin P. Smith

Attorneys for Plaintiffs and Counterdefendants
Oracle International Corporation and Oracle
America, Inc.

CERTIFICATE OF SERVICE